

Joshua Industries, Inc. and Arthur Standish, Trustee in Bankruptcy and District 17, United Mine Workers of America and Local 9533, United Mine Workers of America, AFL-CIO and Phillip Lee White. Cases 9-CA-27958, 9-CA-28299, and 9-CA-28151

June 24, 1994

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS DEVANEY
AND BROWNING

On September 26, 1991, and August 24, 1992, the National Labor Relations Board issued a Decision and Order¹ and Order correcting,² respectively, *inter alia*, ordering the Respondent, Joshua Industries, Inc. and Arthur Standish, Trustee in Bankruptcy, to make whole certain of its bargaining unit employees for loss of earnings and other benefits resulting from the Respondent's failure to comply with the collective-bargaining agreement with District 17, United Mine Workers of America, and Local 9553, United Mine Workers of America and requiring the Respondent to offer Phillip Lee White, an individual, immediate and full reinstatement to his former position or, if such job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges and to make him whole for any loss of earnings or other benefits as a result of the discrimination against him in violation of Section 8(a)(1), (3), and (5) of the National Labor Relations Act.

A controversy having arisen over the amount of backpay due discriminatees, on January 20, 1994, the Regional Director for Region 9 issued a compliance specification and notice of hearing alleging the amount due under the Board's Orders, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated March 15, 1994, the Regional Office advised the Respondent, and its Trustee in Bankruptcy that no answer to the compliance specification had been received and that unless an appropriate answer was filed by close of business March 25, 1994, summary judgment would be sought. The Respondent filed no answer.

On May 16, 1994, the General Counsel filed with the Board a Motion for Summary Judgment and memorandum in support, with exhibits attached. On May 18, 1994, the Board issued an order transferring

the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

Although the Respondent is in bankruptcy, it is well-established that Board proceedings fall within the exception to the automatic stay provision of the Federal Bankruptcy Code for proceedings by a governmental unit to enforce its police or regulatory powers. It is equally well-established that the filing of a bankruptcy petition does not deprive the Board of its jurisdiction to resolve unfair labor practices. See, e.g., *Cardinal Services*, 295 NLRB 933 fn. 2 (1989), and cases cited therein.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the compliance specification and we will order payment by the Respondent of said amounts to the discriminatees, plus interest accrued on said amounts to the date of payment.³

ORDER

The National Labor Relations Board orders that the Respondent, Joshua Industries, Inc. and Arthur Stand-

¹ 304 NLRB No. 137. Summary Judgment not reported in Board volume.

² Not reported in bound volumes. This Order corrected in certain respects a Board Order of August 20, 1992, adopting the findings and conclusions of the administrative law judge in the absence of exceptions.

³ The compliance specification does not include backpay figures or complete figures for all named discriminatees inasmuch as the Respondent did not provide any backpay information. The General Counsel has reserved the right to amend the compliance specification if additional or more complete information is subsequently obtained.

ish, Trustee in Bankruptcy, Logan County, West Virginia, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws:

NAME	BACKPAY	MEDICAL BENEFITS
Rick Adams	\$2,439.64	
Allen D. Adkins	2,6115.76	\$8,058.62
John Bolling		
John Browning	2,838.40	3,114.73
Carl Burgess	2,705.48	1,452.37
Danny Callaway	2,705.48	933.00
Donald E. Chafin		24.32
Teddy T. Coleman	2,838.40	697.86

NAME	BACKPAY	MEDICAL BENEFITS
Mark Ellis	3,021.72	138.00
Billy Harless	2,126.72	2,279.75
Danny Hatfield		
Samuel D. Hensley, Jr.		848.58
Walter Marcum, Jr.		1,917.20
Richard L. Muncey	2,658.40	
Thomas R. Nelson, Jr.	2,439.64	
Jerry Nunley		
Lacy Eugene Plumley	2,306.72	991.63
Carl Robinette, Jr.	8,322.81	
Jerry Michael Shell	2,439.64	6,622.90
Bill Slazo		
Phillip Lee White	25,741.06	
Gregory Williams	3,503.00	3,123.35
Johnny Williams	3,104.24	1,218.15
TOTAL	\$63,484.30	\$39,743.27